



R-510

**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

June 17, 1947

Hon. Weldon B. Davis
County Attorney
Austin County
Bellville, Texas

Opinion No. V-257

Re: Length of time ballots must
remain in the ballot boxes
following special road tax
and county fund reallocation
elections in Austin County.

Dear Mr. Davis:

Your request for an opinion of this Department is substantially as follows:

"On June 7th of this year there will be two elections held in Austin County - one being a 15¢ special road tax election and the other for the reallocation of county funds. Then on Aug. 23rd of this year there will be an election on constitutional amendments.

"Austin County has enough ballot boxes to supply it for the two elections to be held on June 7th but if the ballots must remain in the ballot boxes for one year before they can be destroyed the county will not have enough ballot boxes for the election to be held on August 23rd.

"Question: Will the ballots of the election held on June 7th have to remain in the ballot boxes for one year before they can be destroyed as required by Art. 3028 R.C.S. of Texas, or can they be destroyed after 60 days as provided in Art. 3128 R.C.S. of Texas?"

Article 6791 V. C. S. relating to special road tax elections, reads in part as follows:

". . . The tickets printed and to be voted shall have written or printed on them the words: "For the Tax" and "Against the Tax," and these who favor the tax shall vote the ticket "For the Tax," and those who oppose the tax shall vote the ticket "Against the Tax." The expenses of the election shall be paid for by the county. An election

ordered within ninety days of a general election shall be held on the day of the general election, and as elections on other questions are held, but otherwise the commissioners court shall order a special election which shall be conducted as other elections . . ."

Inasmuch as there is no special election law governing the election for a reallocation of funds, the general laws of the State of Texas are controlling.

Article 2923, Title 50, V. C. S. is as follows:

"The provisions of this title shall apply to all elections held in this State, except as otherwise provided herein."

Article 3028, Title 50, V. C. S., relating to general elections, reads in part:

"Immediately after counting the votes by the managers of election, the presiding officer shall place all the ballots voted, together with one poll tax list and one tally list, into a wooden or metallic box, and shall securely fasten the box with nails, screws or locks, and he shall, within ten days after the election, Sundays and the days of election excluded, deliver said box to the county clerk of his county . . . whose duty it shall be to keep the same securely; . . . If no contest grows out of the election within one year after the day of such election, the said clerk shall destroy the contents of said ballot box by burning the same."

Article 3128, relating to primary elections, is as follows:

"Ballot boxes after being used in primary elections, shall be returned with the ballots cast as they were deposited therein by the election judges, locked and sealed, to the county clerk, and unless there be a contest for a nomination in which fraud or illegality is charged, they shall be unlocked and unsealed by the county clerk and their contents destroyed by the county clerk and the county judge without examination of any ballot, at the expiration of sixty (60) days after such primary election. Provided, that the district judge, upon his own motion or upon the re-

quest of the county or district attorney, may, by an order entered on the minutes of the district Court, defer the destruction of the contents of such ballot boxes for a period not exceeding twelve (12) months after such primary election."

In the case of Beach v. State, 171 S.W. 715, in an opinion by Judge Davidson, the Court of Criminal Appeals said:

"The Legislature by express authority of the Constitution is required to pass such regulations as may be deemed proper to guard the purity of the ballot box, and such incidental matters as that body may think necessary, right and proper. They have exercised their authority to the extent of authorizing ballot boxes to be opened within 12 months in contested election cases, but have not seen proper to go further. Their reasons for not making further provisions are unnecessary to discuss. That they have not done so settles the question, and in enacting legislation with reference to opening ballot boxes they imposed two conditions which are binding upon this court; First, ballot boxes cannot be opened except in election contest cases; and, second, this can only be done within 12 months; and to this may be added the third, that these ballots are required under criminal penalty to be burned at the end of 12 months, and if the clerk does not do so, he is subject to the punishment imposed in the Penal Code."

It will be seen from the foregoing that the special road tax election and the election for the re-allocation of county funds would come within the purview of Article 3028, V. C. S., and pursuant to such authority ballots must remain in the ballot boxes for a period of one year. Therefore, it is the opinion of this Department that at the elections to be held in Austin County on June 7th and August 23rd of this year, the ballots cast at such elections must remain in the ballot boxes for a period of one year before they may be destroyed. Article 3028, V.C.S., is controlling. The provisions of Article 3128, V.C.S., apply only to primary elections held in the State of Texas.

SUMMARY

Ballots to be cast at elections to be held in Austin County to determine if county funds

are to be reallocated and if a special road tax is to be levied must remain in the ballot boxes for one year after the date of such elections before they are destroyed. (Art. 3028, V. C. S.)

Very truly yours

ATTORNEY GENERAL OF TEXAS

s/Burnell Waldrep
Burnell Waldrep
Assistant

BW:djm:WB:wc

APPROVED JUNE 17, 1947
s/Price Daniel
ATTORNEY GENERAL OF TEXAS